IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1210 of 1988
with
CIVIL REVISION APPLICATION No 1264 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VORA KADARBHAI MAJIDBHAI

Versus

MANSURI JUSABHAI SHAKURBHAI

Appearance:

1. Civil Revision Application No. 1210 of 1988
MR NK MAJMUDAR for Petitioner

2. Civil Revision ApplicationNo 1264 of 1988
MR NK MAJMUDAR for Petitioner
MR MANOJ N POPAT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 19/01/2001

C.A.V. JUDGEMENT

1. These two Revisions are proposed to be disposed of by a common Judgment.

2. The facts giving rise to Civil Revision Application No.1210 of 1988 are as under :

The Revisionist Kadarbhai Majidbhai Vora has filed this Revision under Section 29(2) of the Bombay Rent Act alleging that the Decree passed by the trial Court was wrongly disturbed by the Lower Appellate Court. The brief facts are that the plaintiff revisionist is the owner of T.No.1/2, Survey No. 24 situated in Mehsana Sidhpur Bazar. One room on the first floor was let out to the defendant respondent on monthly rent of Rs.10.50 ps. The defendant and his brother Fakirmahmad by making costly expenses constructed their own house in Dabgharvas near Lake in Mehsana. The Suit for eviction of the respondent was filed on five grounds. The first was acquisition of suitable accommodation for his residence by the tenant - respondent. The other was bonafide reasonable personal requirement. The third was illegal subletting or transfer or assignment in any other manner of interest in the tenancy by the tenant-in-chief, to his brother. The fourth was on the ground of making permanent alteration and raising structures without written permission of the landlord revisionist and the last for causing nuisance and annoyance in the suit premises. Notice dated 12.11.1979 was served terminating the tenancy, but it remained uncomplied with hence the Suit for eviction was filed.

3. The respondent contested the Suit, but denied the above averments made against him. He pleaded that he is tenant of one room on the first floor since the time of previous owner Usmanbhai Umarkhan from whom the property was purchased by the plaintiff - revisionist about 2 years before the institution of the suit. It was denied that the rent was due from 31.12.1979. The rent for January and February 1980 was not accepted by the landlord. Thereafter it was sent by Money Order which was refused. It was denied that the Suit accommodation is required bonafide by the landlord for his personal occupation. Allegation of making permanent structural alterations was also denied. It was also denied that the defendant has acquired or built suitable residential accommodation for himself.

4. The trial Court found that the defendant is a statutory tenant of the disputed room and the said room is required by the plaintiff for his personal use in reasonable and bonafide manner, and that if the decree for eviction is refused the landlord will suffer greater hardship. Notice was held to be valid. It was also held that the defendant has acquired vacant possession of a suitable residence after coming into operation of the Bombay Rent Act. It was also found that the disputed

room was sub-let or assigned or transferred in any other manner by the defendant to his brother. The allegation of nuisance was, however, not accepted by the trial Court. The trial Court further held that the defendant errected permanent structure without written consent of the landlord and has also committed an act contrary to the provisions of Section 108(O) of the Transfer of Property Act. With these findings the Suit was decreed.

5. Feeling aggrieved the tenant preferred Appeal which was allowed and the Judgment and Decree of the trial Court was set aside. Feeling aggrieved the landlord has preferred this Revision.

6. Shri N.K.Majmudar, learned Counsel for the Revisionist and Shri N.C.Thakkar for Mr.Manoj Popat, learned Counsel for the Respondent were heard.

7. The facts giving rise to Civil Revision Application No.1264 of 1988 are as under :

The Suit for eviction of the respondent was filed by the revisionist Vora Mohmadnoor Arefbhai on the ground that he is owner and landlord of a double storeyed house T.No.1/2, Survey No.24(A) of Mehsana. Eastern room of the first floor was let out to the defendant respondent on monthly rent of Rs.10.50 ps. It was alleged that the plaintiff has no other property and he requires disputed accommodation for his reasonable and bonafide personal use, because he has to frequently visit Mehsana and he has no other house at Mehsana except this house. It was also alleged that the defendant and his brother Jusabbhai have constructed a big pakka house and as such the defendant will not suffer any hardship in case the decree for eviction is passed. It was also alleged that the defendant had closed the passage of the stair-case by making construction of a wall and opening a door in the common wall of the house. It was also alleged that the defendant has illegally made a partition and has created new right of passage from the stair-case of the property belonging to Vora Kadarbhai. Allegation of act against the terms of tenancy was made against the defendant.

8. This Suit was contested by the defendant - respondent denying all the above allegations. It was denied by him that the disputed room was let out to him by the plaintiff on monthly rent of Rs.10.50 ps. According to him two rooms and chowk of the first floor were taken on rent at Rs.21/- p.m. about 15 years back from Usmanbhai. It was denied that the defendant and his brother have constructed their house in Mehsana.

Allegation of raising permanent construction was also denied.

9. The trial Court found that the defendant has constructed his own house in Mehsana. It further found that the defendant raised permanent construction in the Suit premises without written permission of the plaintiff. The trial Court held that the defendant is tenantof the Suit premises on monthly rent of Rs.10.50 ps. The trial Court further found that by passing a Decree of eviction of the tenant no hardship will be caused to the tenant. It was also found that the plaintiff required the Suit premises reasonably and bonafide for his personal occupation. With these findings the Suit was Decreed.

10. Feeling aggrieved the tenant preferred Appeal which was allowed and the Judgment and Decree of the trial Court was set aside. It is, therefore, this revision.

11. In this Revision also Shri N.K.Majmudar for the revisionist and Shri N.C.Thakkar for Mr.Manoj Popat for the respondent were heard.

12. The Judgments of the two Courts below were examined.

13. The findings of the trial Court that the notice dated 12.11.1979 in Regular Civil Suit No.93 of 1980 is valid hardly requires any interference because nothing could be shown in this revision that this notice is invalid. As many as 11 Issues were framed in Civil Suit No.93/80. The finding of the trial Court that the defendant is a statutory tenant of one room on the first floor on monthly rent of Rs.10.50 ps. is finding of fact which was not disturbed by the lower Appellate Court. As such this finding requires no interference.

14. The trial Court found that the defendant was not guilty of conduct which is a nuisance or annoyance to the adjoining premises or neighbouring occupiers. This finding was accepted by the lower Appellate Court. This concurrent finding also requires no interference in this revision.

15. The finding of the trial Court that the defendant raised construction of permanent nature without landlor's written consent was set aside by the lower Appellate Court. This finding is connected with finding on Issue No.8 that the tenant has committed an act contrary to the

provisions of Section 108(O) of the Transfer of Property Act. The allegation is that a partition wall has been constructed by the tenant without written consent of the landlord and that a door has also been opened. Such construction cannot be said to be of permanent nature as required under Section 13(1)(b) of the Rent Act. Section 13(1)(b) provides that the landlord shall be entitled to recover possession of any premises if the Court is satisfied that save as otherwise provided in Section 23A, the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure. What is permanent structure is defined in Explanation to Sub-Section 1 of Section 13 which provides that for the purposes of clause (b), no permanent structure shall be deemed to be erected on any premises merely by reason of the construction of a partition wall, door or lattice work or the filling of kitchen-stand or such other alterations made in the premises as can be removed without serious damage to the premises. Thus under this Explanation construction of partition wall or opening of a door cannot be said to be permanent construction. Likewise if any other structure has been raised which could be removed without causing serious damage to the premises it will not be construed as permanent structure. Consequently in view of this explanation the landlord cannot get decree of eviction simply because the tenant constructed a partition wall or opened a door in the said partition wall. Moreover it has come in evidence that the partition wall does not reach upto the ceiling and thus such partition wall can be removed without causing any serious damage to the Suit premises. Thus, on this ground the landlord is not entitled to a decree for eviction and the view taken by the lower Appellate Court cannot be said to be illegal or erroneous. As a consequence thereof it cannot be said that the tenant has committed any act contrary to the provisions of Section 108(O) of the Transfer of Property Act.

16. The next point for determination is whether the landlord is entitled to Decree for eviction on the ground of his personal, reasonable and bonafide requirement of the suit accommodation. The finding of the trial Court in affirmative was set aside by the Lower Appellate Court and in my view the Appellate Court committed no illegality in setting aside the finding of the trial Court on this Issue. U/s. 13(1)(g) the landlord is entitled to decree for eviction of the tenant if he establishes that the premises are reasonably and bonafide required by him for occupation by him or by any person for whose benefit the premises are held, (or where the landlord is a trustee of a public charitable trust, that

the premises are required for occupation for the purpose of the Trust). Even if it is held that the disputed premises is reasonably and bonafide required by the landlord for his personal use he will not be entitled to decree for eviction in view of Explanation to Section 13(2) of the Act. This Explanation for the purposes of clause (g) of Sub.Section 1 provides that a person shall not be deemed to be a landlord unless he has acquired his interest in the premises on a date prior to the beginning of the tenancy or first day of January 1964 whichever is later or if the interest has been devolved on him by inheritance or succession, his predecessor in title had acquired interest at a date prior to the beginning of the tenancy or first day of January, 1964 whichever is later. The second part of this explanation is not applicable because the landlord is not claiming ownership in the suit property by inheritance or succession. On the other hand he is claiming ownership by virtue of sale deed, namely, by virtue of purchase. The lower Appellate Court found that the Registered Sale Deed Ex.84 was executed on 9.9.1970. The lower Appellate Court repelled the version of Kadarbhai Majidbhai that he had purchased the property in the year 1971-72. The plaintiff purchased the house from the original landlord Haji Usmanbhai Umarbhai. It has come in evidence that the defendant was tenant from the time of Haji Usmanbhai. It was therefore a case where the plaintiff landlord did not acquire interest in the premises at a date prior to the beginning of the tenancy. The Sale Deed is of 9.9.1970. Prior to that the revisionist could not have acquired any title in the property. The other condition of the explanation is also not fulfilled because the landlord revisionist did not acquire interest in the premises on the first day of January 1964. As such for the purposes of Section 13(1)(g) the revisionist shall not be considered to be a landlord of the defendant though he may be considered to be the landlord of the defendant so far as other issues are concerned. By enacting this explanation the Legislature has made distinction in the concept of expression landlord where eviction is sought on the ground of bonafide personal requirement. The expression landlord has to be understood within the meaning of Explanation (g) to Section 13(2) of the Bombay Rent Act. It is thus clear that if the tenancy was created before the so called landlord acquired interest in the premises he will not be entitled to get decree for eviction on the ground of his bonafide and reasonable requirement of the suit accommodation and to this extent he will not be considered to be the landlord of the tenant. Likewise if the landlord acquired interest in the premises on 1.1.1964 then also he will not be considered to be

landlord. In the case before me the landlord acquired interest in the premises on 9.9.1972. As such he is not entitled to the Decree for eviction on the ground of his bonafide personal requirement.

17. The next point for consideration is whether the defendant had illegally sub-let or transferred or assigned, in any manner, his interest in the suit property to his brother. On this point the trial Court found that the defendant has been guilty of illegal subletting and in any event of making illegal transfer or assignment of his interest in tenanted portion to his brother. The Lower Appellate Court has however reversed this finding on the ground that the landlord has failed to establish that the sub-letting subsisted on the date of the Suit or on the date of the notice and that he further failed to establish that the brother of the tenant was paying rent to the tenant-in-chief. The lower Appellate Court found on these facts that the plea of illegal subletting was not established.

18. Section 13(1)(e) of the Rent Act provides that a tenant can be evicted if he has, since coming into operation of this Act, unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein to some other person. Thus Section 13(1)(e) is not confined only to illegal subletting or unlawful subletting of whole or part of the premises, but it also covers the cases where interest in the tenancy is assigned or transferred in any other manner by the tenant in chief to some other person. In Harshachandra Narsibhai Patel & ors. v/s. Ibrahim Haji Khubanbhai, reported in 1984 G.L.H. 965, this Court has held that Section 13(1)(e) of the Rent Act is much wider and it is not confined merely to the acts of unlawful sub-letting. It also provides that if a tenant has assigned or transferred in any other manner his interest in the premises taken on lease by him, then also the landlord will become entitled to a decree for possession of the said premises. The word "transfer in any other manner" are much wider and would include within their meaning and ambit a transfer made in favour of a relative or a known person, once it is proved that he has left the premises and the transferree is put in exclusive possession. To give these words a restricted meaning and equate such a transfer with sub-letting is to make that part of the sub-section redundant.

19. However, in case of sub-letting two things are to be established. One is that the tenant has made exclusive transfer of possession of either whole or part

of the premises and such transfer of possession was for consideration. However, in cases where the transfer is made to a relative or even to an out-sider it is very difficult for the landlord to establish that the transfer was for valuable consideration. No direct evidence can be produced by the landlord in cases of such secret transaction. All that the landlord can show and establish is that the tenant has parted with exclusive possession and control over the premises and has put in either a relative or an out-sider in exclusive possession of the suit premises. If this ingredient is established then an inference can be drawn that such transfer was for some valuable consideration, because normally such exclusive transfer of possession without consideration wil not be made by the tenant. However, where the landlord also alleges that the tenant has assigned or transferred in any other manner his interest in the tenancy then by mere proof of transfer of exclusive possession by the landlord entitles him to a decree for eviction and he is not obliged to establish that such transfer of possession was for valuable consideration in cases of assignment or transfer in any other manner of tenant's interest in the tenancy.

20. On facts it is established that the so called sub-tenant is none-else than the real brother of the tenant-in-chief. In these circumstances the landlord could not have proved passing of valuable consideration. He however succeeded in establishing that the tenant-in-chief had shifted to newly constructed house in Mehsana and his brother was in exclusive occupation of the disputed premises. It has also come in evidence that after receipt of notice from the landlord the tenant in chief has returned back and occupied the suit premises. The question is whether on such facts the decree for eviction could be passed.

21. Shri N.K.Majmudar for the revisionist contended that it is not necessary that sub-letting must continue on the date of the Suit or even on the date of notice and has placed reliance upon a Division Bench pronouncement of this Court in MAGANLAL NARANDAS THAKKAR V/S. ARJAN BHANJI KANBI, reported in 1969 G.L.R. 837. It was a case under Saurashtra Rent Control Act when Section 13(1)(e) was interpreted. It was held that the words "has sublet" do not include any element of the sub-tenancy being in existence at the date when the suit is filed. Itis not necessary that sub-letting must continue on the date of the suit or even existed at the date of the notice. It is enough for the landlord to satisfy the Court that after the Saurashtra Rent Control

Act had come into operation, the tenant did sub-let the premises or a part thereof unlawfully and it is not necessary to further show that the sub-tenancy was subsisting at the date of the Suit.

22. The Hon'ble Supreme Court in the case of GAJANAN DATTATRAYA v/s. SHERBANU HOSANG PATEL, reported in AIR 1975 SC 2156 has however taken a different view and has held that the provisions of the Bombay Rent Act, Section 13(1)(e) indicate that a tenant is disentitled to any protection under the Act if he is within the mischief of the provisions of Section 13(1)(e), namely, that he has sublet. The language is that if the tenant has sublet, the protection ceases. It cannot be contended that the sub-letting must continue at the date of the suit for passing the decree for eviction. The tenant's liability for eviction arises once the fact of unlawful subletting is proved at the date of the notice. Thus, the Hon'ble Supreme Court did not, while approving the Division Bench pronouncement of this Court in 1969 GLR 837, fully accepted the view that sub-tenancy must also subsists on the date of the Suit. It is enough if the illegal sub-tenancy subsisted on the date of the notice then the tenant looses protection and the decree for eviction can be passed against him.

23. In view of this decision if the tenant had shifted to newly built house and returned back to the suit premises after receipt of notice of eviction the plea of illegal sub-letting does not go away. Since the illegal sub-letting subsisted on the date of notice hence the decree for eviction could be passed.

24. As pointed out earlier this alleged sub-tenant is none-else than the brother of the defendant tenant-in-chief. Exclusive possession could be established by the landlord from the evidence on record. As such if he could not produce the evidence that the sub-tenant, namely, the real brother of the tenant-in-chief was paying any rent to the tenant-in-chief the decree for eviction cannot be refused. In any case in alternative it is established that it was a case of transfer or assignment of interest in the tenancy to the brother of the tenant in chief and for this the landlord was not required to establish that the transfer or assignment was for a valuable consideration. Thus, on this ground also the Decree for eviction could be passed against the tenant. The lower Appellate Court, therefore, committed manifest illegality in setting aside the decree for eviction passed by the lower Court.

25. The next point for consideration is whether the tenant has acquired suitable alternative accommodation for his use and occupation. It is alleged by the plaintiff that the defendant and his brother Fakirmahmad Shakurbhai have constructed a new three storeyed pakka building at Dabgharvas in Mehsana city which is suitable to accommodate the defendant and his family members. The defendant's stand is that he had not constructed the aforesaid house rather it was constructed by his mother who is the owner of the house and since the defendant is Mahomedan the concept of Joint Hindu family will not be applicable. From the evidence on record it is proved that new residential house has been constructed. According to the plaintiff the stand of the defendant is not acceptable and even though the name of the defendant's mother is entered in relevant papers it is nothing but a benami transaction and that actually the defendant and his brother have constructed the aforesaid house.

26. The plaintiff's witness Faridmiya deposed that he used to pass through the newly constructed building which was constructed about 2 years back. There are three rooms on the ground floor and two rooms on the first floor of this building and ground floor rooms are in possession of the defendant and his brother while one room has been let out to the tenant. Another witness of the plaintiff Abdulrehman stated that he had seen the defendant and his brother working at the site when new building was under construction. He further stated that the defendant's mother was residing with Jusabbhai in the suit premises. Indrajit Manilal, another witness examined by the plaintiff had proved the Voter's list of Mehsana Nagar Palika prepared in the year 1980, Ex.61. He also produced true copy of permission granted to Mariyamben for making construction. Mariyamben is the mother of the defendant. Permission to construct is at Ex.62. In the voter's list Ex.61 it appears that the name of the defendant Jusabbhai appeared at page No.26 and the name of the defendant's brother Fakirmahmad Shakurbhai also appeared so also the name of the defendant's mother Mariyamben. Voter's list, therefore, shows that the defendant and his mother so also his brother were residing in the newly constructed house. There is evidence that after service of notice of ejectment the defendant returned back to the disputed portion. Another witness of the plaintiff Jashvant Ramji, who is working at the Consumer Co.Operative Society, Mehsana, produced extract of Register maintained in the shop for the year 1979-80, where at Sr.No.422,

House No.1/18/104 it is mentioned in 4th column the name of the defendant and the names of other members of his family are also mentioned. The name of Fakirmohmad is mentioned at Sr.No.1 so also the nameof Jusab and Mariyam are also entered in this Register Ex.66. This also shows that they were residing in the new house and were drawing ration from the consumer co.operative shops for their use.

27. The Property Card Register Ex.32 also shows that Mariyam is recorded as owner. However, when the plaintiff has alleged that the defendant and his brother are the owners of the newly constructed house and the name of Mariyam is Benami, the onus was certainly on the plaintiff to prove the Benami transaction. However, Benami transaction cannot be proved by direct evidence. It can be proved by circumstancial evidence. Old house was purchased whereafter new house was constructed in the name of Mariyamben. It has not been disclosed by the defendant as to what was the source of income from which Mariyamben purchased the old house and constructed the new house. The only thing is that she was doing Kirana business and from such small business it is very difficult to believe that she could have constructed the house in her own name from her own fund. Mariyam could have been the best witness to prove that the benami transaction is imagination of the plaintiff and that she is the real owner of the newly constructed house. Mariyamben is the mother of the defendant. The defendant did not examine this witness. She was the best witness and if she would have been examined she would would have revealed the truth but she was not examined. Therefore adverse inference can be drawn against the defendant that in case Mariyamben would have been examined she would not have supported the defendant. It may also be mentioned that the plaintiff by taking great risk tried to summon Mariyamben as his witness repeatedly, still Mariyamben did not appear in Court. Thus, the best witness to depose that Mariyamben is the owner of the house has not been examined and the plaintiff's effort to examine her also failed. Consequently the plaintiff's evidence as well as the statement of his witnesses has to be accepted and it has to be held that the defendant has built alternative accommodation which is sufficient to accommodate him and his family members. It has also come in evidence that one room in the newly constructed house has been let out to a tenant. This goes to show that the accommodation in the new house is sufficient to accommodate the entire family of the tenant.

28. Shri N.K.Majmudar relying upon a decision of this

Court in Hasmukhlal v/s. Arvind, reported in 1988 (1) GLH 122, contended that even if for a moment it is believed that the house was constructed by the defendant's mother Mariyamben it will be deemed that it was constructed by a family member of the defendant and if any member of the family of the defendant constructs a house it will be deemed that the tenant has constructed such alternative accommodation, and as such decree for eviction can be passed. This case was tried to be distinguished by Shri N.C.Thakkar, learned Counsel for the respondent on the ground that it was a case amongst Hindus and in that case the tenant's wife had built a bungalow and on this fact it was held by this Court that construction of a bungalow by tenant's wife from her own income will be considered to be construction of a house by a member of the defendant's family, whereas in this case the mother of the defendant constructed a house and the defendant and his mother are Mahomedans hence the above verdict in Hasmukhlal (supra) cannot be applied. I am unable to accept the distinction suggested by Shri Thakkar. It has to be seen irrespective of the fact that Mariyamben is the mother of the tenant whether she was residing as family member of the defendant. For this the Appellate Court in Para : 36 of the Judgment has observed that "though the defendant tried to deny it is brought out that his mother is staying with him". Mafaji Sendhaji, Bailiff of Civil Court, Mehsana examined by the plaintiff, deposed that when he went to the Suit premises on 10.6.1982 he had seen Mariyamben there, but she refused to accept the summons and sign the same which also goes to show that Mariyamben was living with the defendant in the suit premises. Even in the newly built house Mariyamben and the defendant as well as his brother were living. Their names have been mentioned in the voter's list. They drew ration from this very house from the consumer co.operative society shop. All these evidence will show that Mariyamben was living as a family member of the defendant and his brother. If this is so then the construction of a house by Mariyamben will be deemed to be construction of house by the defendant tenant. Accommodation in the new house is more than sufficient to accommodate the entire family of the defendant including his brother and mother. The lower Appellate Court, in my view, was in error in reversing the findings of the trial Court on this issue. This was a ground on which also the decree for eviction could be passed and was rightly passed by the trial Court.

29. For the reasons stated above the defendant is liable to be evicted from the Suit accommodation on the ground of illegal sub-letting or transferring or

assigning his interest in the tenancy to his brother and also on the ground that he had built a suitable alternative accommodation and house for occupation for himself, his brother and his mother. The lower Appellate Court was therefore in error in reversing the Judgment and Decree of the trial Court. The revision, therefore, succeeds and is liable to be allowed.

30. Coming to the other Civil Revision Application No.1264 of 1988 it is found that Mansuri Fakirmahmad Shakurbhai was tenant of the disputed accommodation whereas Mahmadnoor Arefbhai Vora is the owner - landlord of the same. In the Suit, out of which this revision arose, eviction was sought on the ground that the defendant has constructed his own house at Mehsana and that he has raised permanent construction in the suit premises without written permission of the plaintiff, and also on the ground of personal, reasonable and bonafide requirement of the landlord. The grounds of sub-letting and annoyance and causing nuisance in the suit premises were not taken in this suit.

31. The tenant contested the suit denying all the allegations and also disputed the extent of tenanted accommodation and the rate of rent. According to the tenant a room and chowk was taken on rent of Rs.21/- p.m. from the landlord Usmanbhai Umarbhai about 15 years back. According to the landlord the rate of rent was Rs.10.50 ps. p.m.

32. The trial Court found that the defendant constructed his own house at Mehsana which was suitable for his residence. It further found that the defendant made permanent structure without written consent of the landlord. Regarding rate of rent it was found by the trial Court that the rate of rent was Rs.10.50 ps. p.m. The trial Court further found that the plaintiff required the suit premises for his personal, bonafide requirement and greater hardship would be caused to the plaintiff in case the Decree for eviction is not passed.

33. The finding regarding the rate of rent was not disturbed by the lower Appellate Court, consequently this finding has become final.

34. Similar were the allegations in the Suit out of which Civil Revision Application No.1210 of 1988 arose and in that revision I have held that the defendant has constructed his own house at Mehsana which is suitable to accommodate him and his family members. For the reasons given in the aforesaid Civil Revision Application it is

held in this Revision also that the defendant has constructed his own house at Mehsana which is sufficient alternative accommodation to accommodate him and his family members.

35. The plea of the landlord that the tenant made permanent structure without his written consent was not accepted by me in Civil Revision Application No.1210 of 1988 and for the same reasons in this Revision Application also it is held accordingly that the alteration made by the defendant are not in the nature of permanent structure for which decree for eviction can be passed.

36. Likewise in Civil Revision Application No.1210 of 1988 in view of Explanation to Section 13(1)(g) it was held that the plea that the suit premises is reasonably and bonafide required by the plaintiff is not available to him in view of his purchasing the property after the specified date viz. 1.1.1964. For the same reasons it is held in this revision also that the landlord is not entitled to decree for eviction of the tenant on the ground of his personal bonafide requirement because in view of explanation to Section 13(1)(g) the plaintiff will not be considered as landlord for seeking eviction of the tenant on this ground.

37. In view of above discussions the landlord revisionist was entitled to Decree for eviction on the ground that the tenant has acquired alternative suitable residential accommodation to accommodate him and his family members. The Lower Appellate Court, therefore, fell in error in disturbing the decree of the trial Court for eviction of the defendant respondents.

38. It may be mentioned that if the landlord seeks eviction of the tenant on more than one ground, but succeeds in establishing only one ground for eviction, but fails in establishing other ground, still he is entitled to decree for eviction. The lower Appellate Court was therefore in obvious error in setting aside the judgment and decree of the trial Court for eviction of the defendant respondent. As such this revision also succeeds and is liable to be allowed.

39. In view of the for-going discussions Civil Revision Application Nos.1210 of 1988 and 1264 of 1988 are allowed with no order as to costs. The Judgments and Decree of the lower Appellate Court dated 31.8.1988 in Civil Revision Application No.1210/88 are set aside and that the Judgment and Decree of the trial Court dated

5.4.1984 are restored. Likewise the Judgment and Decree of the lower Appellate Court dated 31.8.1988 in Civil Revision Application No.1264 of 1988 are set aside and that of the Judgment and decree of the trial Court dated 5.4.1984 are restored.

sd/-

Date : January 19, 2001 (D. C. Srivastava, J.)

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